IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 898 OF 2002

Union of India and others ..... Petitioner.

versus

Shri G.M.Choudhary ..... Respondent.

.....

Shri P.M.Pradhan for the petitioner.
Shri Rameshkumar Ramamurthy for the Respondent.

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CORAM ; V.G.PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED; 9TH MARCH, 2005.

P.C.;

1. By this petition, the petitioner, Union of India, has challenged the order passed by the Central Administrative Tribunal quashing the charges levelled against the respondent for alleged misconduct. In so doing the Tribunal has itself given a finding that the action does not amount to misconduct. We have almost an identical matter arising out of an order made by the same Tribunal in relation to an employee of the same department namely Income Tax Department. (In that case it was Mr. Binoy Gupta, Commissioner of Income Tax). There we have, following the decision of the Supreme Court of India, held that the Tribunal exceeded its jurisdiction in interfering with the charge. As such

intervention as held by the Supreme Court is not permissible except in exceptional circumstances mentioned by the Supreme Court.

2. In the present case also situation is similar. Whether it is misconduct or not is a finding to be given on facts of each case and even in this case as and when the Disciplinary Authority comes to a conclusion that it is a misconduct and remedy is available to the petitioner, by way of application before Central Administrative Tribunal.

3. It is also open for the petitioner to point out relying on the Appellate Tribunal's order that its opinion having been affirmed by the Tribunal, no case for departmental proceedings is made out. Such submission can be made before Disciplinary Authority itself. That being the factual position, we see no reason why the order of Tribunal should be sustained. In the result the petition succeeds and is allowed. The impugned order is set aside.

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